

WYOMING SELECT FEDERAL NATURAL RESOURCE MANAGEMENT COMMITTEE

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WYO-BEN, INC.

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Chairman Boner (Brian), Chairman Burkhart (Donald), and Members of the Committee, thank you for the opportunity to provide an update to the Select Federal Natural Resource Management Committee of Wyo-Ben's permitting status with our Coal Draw Project and current general discussion of the 1872 Mining Law Reform in the House to the Budget Reconciliation Bill, proposing a new Royalty on locatable minerals, a new 7 cent Reclamation Fee on hardrock minerals, and increase in the Annual Federal Claim Maintenance Fee.

My name is Joseph Sylvester, and I am the Natural Resources Manager of Wyo-Ben, Inc., we are a 70-year-old, small, family owned and managed mining and manufacturing business with headquarters in Billings, Montana and mining operations in the Big Horn Basin. Wyo-Ben directly employs 140 associates in our Wyoming and Montana operations paying wages that are significantly higher than the median wages in the communities where we have operations. We also indirectly employ another 60 people who work for our mining and hauling contractor. These wages, when combined with the local goods and services we purchase, have a significant impact on the economies of the rural towns and counties in the Big Horn Basin where we operate.

Wyo-Ben is pleased to update you, that on July 20, 2021, we received a "Find of No Significant Impact (FONSI)" for our Coal Draw Project. This delayed approval was authorized only after receiving support from this Committee, Senator Cheney, Senator Barrasso, and Congresswoman Lummis. As you may recall, Wyo-Ben submitted the Coal Draw Plan of Operation (PoO) to the Wyoming Land Quality Division (WYLQD) and Bureau of Land Management (BLM) on September 25, 2014. The WYLQD approved the Plan of Operations (PoO) on September 1, 2015 and since that time, Wyo-Ben dealt with various Section 106 issues, as previously discussed at the May 26, 2021 meeting. The primary questions were 1) whether the BLM and Wyoming State Historic Preservation Office (SHPO) could require compensatory offsite mitigation, 2) tribal monitoring, and 3) annual field monitoring that were included in the Memorandum of Agreement. In the end, Wyo-Ben conformed, under duress, to the requirements since the project was stalled and had no hope of advancing.

BACKGROUND

Wyo-Ben mines a mineral called Sodium Bentonite which is one member of a group of minerals known as 'Industrial Minerals'. These minerals, which are produced in high volumes and have low margins, are widely used in the products we rely on in our daily lives. While bentonite is found in many other parts of

the world, the bentonite found in Wyoming and bordering states is exceptional in its quality characteristics. So much so that it is known as “Wyoming Bentonite” and is the benchmark for bentonite quality around the world. Wyoming Bentonite is used as a base material to create hundreds of different products that are sold worldwide. Wyoming Bentonite was used as the binder to create the sand mold used to cast the engine block for your car or truck. The municipal landfill in your community would have environmental issues if Wyoming Bentonite wasn’t used to form the impermeable bottom liner that prevents landfill leachate from contaminating ground water. Streams and lakes would be far dirtier if contaminants were not removed from industrial wastewater before discharge using Wyoming Bentonite. It would be difficult to drill any kind of well or install the miles of telecommunication and utility lines buried throughout the country without using Wyoming Bentonite as the drilling mud. The wine, beer or fruit juice you enjoy would be unpalatably cloudy if not for the Wyoming Bentonite used to clarify it. And you would be very unhappy if not for Wyoming Bentonite’s unique properties that allow your cat’s waste to form odorless clumps for easy removal from the litter box.

While a large percentage of the bentonite mined in Wyoming is used domestically, about 20% is sold outside of North America. This is due to the exceptional performance characteristics exhibited by Wyoming Bentonite that are not easily duplicated by foreign sources of the clay. Despite this, there are significant quantities of lower quality foreign bentonites which find their way into the U.S. market due to their low cost. China is the second largest producer of bentonite behind the United States.

It's important for me to note that around 90 percent of the bentonite we use for our products is obtained from mining claims on federal lands administered by the Bureau of Land Management. Our mining is open pit employing efficient modern mining techniques using scrapers and dozers in a “continuous cast back” mining technique that we developed to place the overburden removed from one pit directly into the preceding pit in a pit series.¹ This allows us to spread topsoil containing live native plant seed directly on previously mined and backfilled pits. On average, we must move eight to ten cubic yards of overburden and topsoil for each cubic yard of bentonite we mine. The bentonite deposits we mine are very thin, averaging only 3 1/2 feet thick, and often run laterally for miles. The disturbance footprint of our pit is relatively small, averaging about 200 feet wide by 400 feet long. A typical pit is open for only a matter of months before the overburden and topsoil is replaced and we begin our planned revegetation process which focus on creating a diverse habitat that blends into the surrounding undisturbed lands.²

As a result of our mining and reclamation practices, we have been honored to receive numerous awards from State, Federal and non-governmental agencies and industry associations for our exceptional environmental stewardship. Most recently, Wyo-Ben received the WY LQD Non-coal reclamation award this year for the reestablishment of sagebrush. Other agencies include the Bureau of Land Management’s Hardrock Mineral Environmental Award, the Interstate Mining Compact Commission’s Reclamation Award (Non-Coal Category), several Excellence In Surface Mining awards from the

Wyoming Department of Environmental Quality, the Wildlife Habitat Reclamation and Stewardship Award from the Wyoming Game and Fish Department, as well as several excellence in environmental performance and sustainable development awards from industry associations.

Wyo-Ben has realized the BLM permit approval timeline continues to increase over the past 15 years while the State Department of Land Quality Divisions are able to review and approve the same PoO within 180 days of submittal with less personnel. Wyo-Ben was encouraged with the recent changes with the concurrent processing of the Section 106 requirement with the NEPA process and requirements of timely reviews and page limitation for the NEPA documents, this was a step in the right direction, which has been reversed under the current Administration.

The most recent challenges that our industry has been dealing with is the proposed changes to the 1872 Mining Law. As a small company that operates in an industry segment with inherently low profit margins, and that relies heavily on mineral resources from federal lands, our ability to compete in the domestic and international marketplace is dependent on our ability to access and economically mine these resources.

This is why any discussion about changing the Mining Law, the rules under which we have always operated, is of particular concern to us. Several significant changes to the Mining Law are being proposed in the “Hardrock Mining” section of the House draft of the budget reconciliation bill that is currently being negotiated in Congress.

First, this section seeks to establish a new royalty system for hardrock mining of 8 percent of gross income for all new plans of operation and 4 percent of gross income for all existing plans of operation. While this may be more easily borne by larger mining companies, especially those outside of the Industrial Minerals segment, small industrial minerals companies like Wyo-Ben will be hard pressed to absorb this cost due to our already thin margins.

Second, this section seeks to establish a new “Reclamation Fee” of 7 cents per ton of displaced material, referred to as a Dirt Tax, which is defined as unprocessed ore and waste dislodged from its location at the time of mining. This proposal seems to be based on the idea that the state run mine reclamation programs are not doing their job and additional funds are needed by the federal government to ensure that mine reclamation is satisfactorily completed.

Third, this section seeks to increase the annual claim maintenance fee from \$165 to \$200 per 20 acres. In 1993 Congress enacted a law requiring payment of \$100 per year per claim as a claim maintenance fee with the provision that every 5 years the Bureau of Land Management could increase this fee by using the Consumer Price Index to adjust it for inflation. This has been done multiple times since then to

¹ See Appendix I

² See Appendix II

the point where the fee is currently \$165. In 2012 Congress modified the requirement making it apply to each 20-acre parcel in a claim rather than each claim.

Additionally, two funding provisions are also included in the Hardrock Mining section. The first provides for \$2.5 billion in additional funding for the Abandoned Mine Lands program to “inventory, assess, decommission, reclaim, respond to hazardous substance releases on, and remediate abandoned locatable minerals mine land”. The Abandoned Mine Lands program has been in existence since 1977 when the Surface Mining and Control Act was passed. Since that time it has collected \$11.674 billion to be used to address abandoned mines across the country. The Office of Surface Mining Reclamation and Enforcement states that \$9.461 billion of this amount has been spent leaving \$2.213 unappropriated. If \$2.213 billion remains unspent after the AML program has been in existence for 44 years, why is an additional \$2.5 billion needed now? This provision of this section is a solution looking for a problem.

The second funding provision provides for \$3.0 million to revise the rules and regulations in the Federal Land Policy and Management Act of 1976 (FLPMA) to prevent undue degradation of public lands due to hardrock mining activities. Across the country, states are charged with regulating mining activity and ensuring that mines are reclaimed before the mine operator is released from liability. Significant sums of money are put up in the form of reclamation bonds to insure that, if an operator fails and the state must assume responsibility for reclaiming a mine site that there are sufficient funds to do so. Since no mine reclamation bond associated with a permitted mine has been forfeited in over two decades this current system appears to be working well. As a result, we again appear to have a solution looking for a problem.

If additional funds are really needed to address real hardrock mining issues we need look no further than to the funds that are annually collected from the current Claims Maintenance Fee. According to the Bureau of Land Management’s most recent statistics, they received over \$71 million in FY 2019 from claim maintenance fees and claim location fees. Less than \$40 million of that amount was used for administration of the Mining Law program with the remaining \$31 million going to the general treasury. If additional funding is really needed for mining related programs, Congress should look to these funds which should have been used for mining related issues.

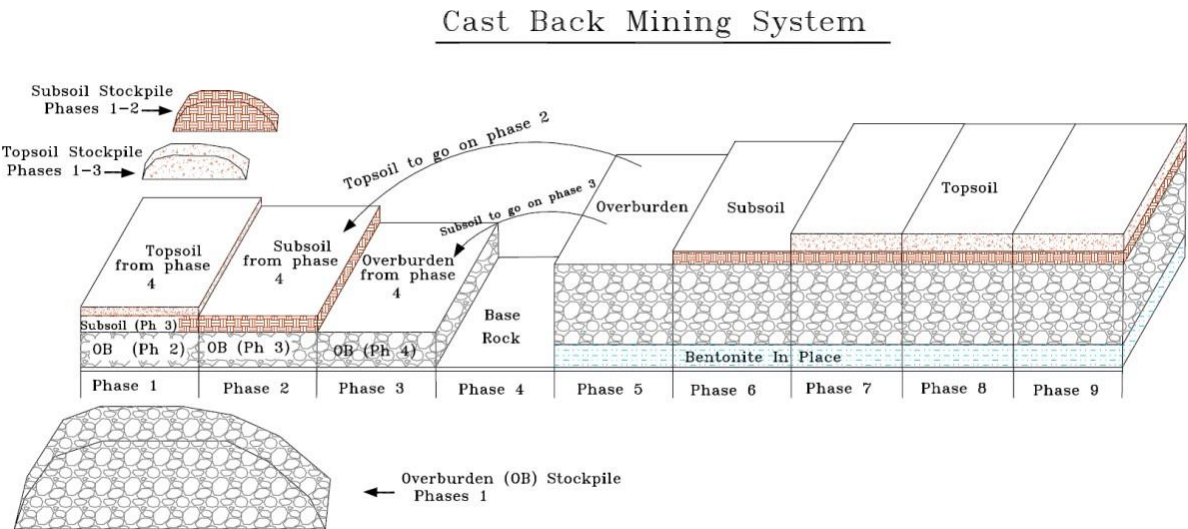
As the previous paragraphs illustrate, any discussion of changes to the Mining Law must recognize that this is an extraordinarily complex issue. There are 149 years of promulgated regulations and case law, that must be dealt with thoughtfully and with care. The current reconciliation bill provides neither the time nor the appropriate venue for such a detailed and thoughtful discussion of the issues inherent in such a change.

The “one size fits all” approach to mining law reform put forth in the Hardrock Mining Section will significantly affect our company’s ability to remain competitive and, perhaps, our viability to continue to operate and offer good paying, high quality employment. Further, the negative impact of the proposed Mining Law changes on the nations supply chain as well as on our local communities would be severe. For all these reasons, we respectfully request the Committee to recommend to the full Senate and House:

- 1) That the Hardrock Mining Section be removed from the final Reconciliation Bill
- 2) Encourage them to have a discussion with **all** stakeholders to address any proposed changes to the 1872 Mining Laws.
- 3) Create a predictable and timely review process for future Plans of Operations including (NEPA, Section 106, WOTUS, ESA, Air Quality)
- 4) Encourage Congress and the House to formally recognize “essential minerals” that are part of the key materials to manufacture everyday components (e.g. foundry industry uses bentonite to help cast the molds to make automobile and military parts)

Thank you for the opportunity to present this information and I would be happy to answer any question you may have for me.

Figure 1: Cast Back Mining Process



Appendix II: Undisturbed and Reclaimed Lands

Figure 1: Reclaimed land on left, undisturbed land on upper right



Figure 2: Undisturbed land in upper right next to reclaimed land with pond